

**IN UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION**

**WEST BEND INSURANCE COMPANY,)
f/k/a WEST BEND MUTUAL)
INSURANCE COMPANY,)**

Plaintiff,)

Case No.)

v.)

JURY TRIAL DEMANDED)

**UNITED STATES OF AMERICA)
CHESS FEDERATION,)**

**Serve: 333 S 18th St)
Ste 210)
Saint Louis, MO 63103)**

and)

**RANDY BAUER)
801 Grand Avenue)
33rd Floor)
Des Moines, IA 50309)**

Defendants.)

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff West Bend Insurance Company, formerly known as West Bend Mutual Insurance Company ("West Bend"), hereby files this Complaint for Declaratory Judgment against Defendants United States of America Chess Federation ("US Chess") and Randy Bauer ("Bauer"), and in support thereof, states as follows:

JURISDICTION AND VENUE

1. Plaintiff West Bend is a corporation organized under the laws of the State of Wisconsin with its principal place of business in Wisconsin.

2. Defendant United States of America Chess Federation is a nonprofit corporation incorporated under the law of Illinois with its principal place of business in Missouri. It previously maintained a corporate office in Crossville, Cumberland County, Tennessee.

3. Defendant Randy Bauer is a citizen of Iowa. He is the President of the Executive Board of US Chess.

4. The amount in controversy in this case exceeds the sum or value of \$75,000, exclusive of interests and costs.

5. Accordingly, this Court has diversity jurisdiction over this action under 28 U.S.C. § 1332.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the contract and alleged events giving rise to the allegations in this complaint was formed in this district.

THE POLICY

7. West Bend issued an Employment Practices Liability Policy naming “United States of America Chess Federation” as the named insured, Policy Number A607452, with effective dates of May 31, 2019 to May 31, 2020, which was renewed effective May 31, 2020 to May 31, 2021, which was renewed effective May 31, 2021 to May 31, 2022, which was renewed effective May 31, 2022 to May 31, 2023 but which was cancelled effective August 30, 2022. West Bend issued an Employment Practices Liability Policy naming “United States of America Chess Federation” as the named insured, Policy Number B163731, with effective dates of August 30, 2022 to August 30, 2023 but which was cancelled effective January 1, 2023. West Bend issued an Employment Practices Liability Policy naming “United States of America Chess Federation” as the named

insured, Policy Number B240635, with effective dates of January 1, 2023 to January 1, 2024, which was renewed effective January 1, 2024 to January 1, 2025. The insurance policies referenced in this paragraph are attached hereto, marked as Exhibits 1-7, and shall be referred to collectively as the “Policies.”

8. The Policies’ Declarations list a Retroactive Date of May 31, 2018.

9. The Policies’ Declarations state that the Policies have an Each Claim Limit of \$5,000,000 and a Policy Aggregate Limit of \$5,000,000.

10. Paragraph 1. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, A. INSURING AGREEMENT”** of the Policies states that West Bend “will pay on behalf of the insured for ‘damages’ in excess of the Deductible arising out of any ‘employment practices’ to which this insurance applies.”

11. For the Policies effective from May 31, 2019 to August 30, 2022, the Policies define “damages” to mean “monetary amounts to which this insurance applies and which the insured is legally obligated to pay as judgments or awards, or as settlements to which we have agreed in writing. ‘Damages’ include (i) ‘pre-judgment interest’ awarded against the insured on that part of the judgment we pay, (ii) to the extent allowed by law, any portion of a judgment or award that represents a multiple of the compensatory amounts or punitive or exemplary damages, and (iii) statutory attorney fees. ‘Damages’ do not include: **1.** Civil, criminal, administrative or other fines or penalties; **2.** Equitable relief, injunctive relief, declarative relief or any other relief or recovery other than monetary amounts; or **3.** Judgments or awards because of acts deemed uninsurable by law.”

12. For the Policies effective from August 30, 2022 to January 1, 2025, the Policies by endorsement define “damages” to mean “monetary amounts to which this

insurance applies and which the insured is legally obligated to pay as judgments or awards, or as settlements to which we have agreed in writing. 'Damages' include (i) 'pre-judgment interest' awarded against the insured on that part of the judgment we pay, (ii) any portion of a judgment or award that represents a multiple of the compensatory amounts or punitive or exemplary damages, and (iii) statutory attorney fees. 'Damages' do not include: **1.** Civil, criminal, administrative or other fines or penalties; **2.** Equitable relief, injunctive relief, declarative relief or any other relief or recovery other than monetary amounts."

13. The Policies define "employment practices" to mean "any of the following actual or alleged practices (i) which are directed against any of your 'employees', 'leased workers', 'temporary workers', former 'employees', a 'third party' or any applicant for employment by you, and (ii) for which remedy is sought under any federal, state or local statutory or common civil employment law:

1. Wrongful refusal to employ a qualified applicant for employment;
2. Wrongful failure to promote or wrongful deprivation of career opportunity;
3. Wrongful demotion, negligent evaluation, negligent reassignment or wrongful discipline;
4. Wrongful termination of employment, including retaliatory or constructive discharge;
5. Employment related misrepresentation;
6. Harassment, coercion, discrimination or humiliation as a consequence of race, color, creed, national origin, marital status, medical condition, gender, age, physical appearance, physical and/or mental impairments, pregnancy, sexual orientation or sexual preference or any other protected class or characteristic established by any applicable federal, state, or local statute; or

7. Oral or written publication of material that slanders, defames, libels, violates, or invades a right of privacy.”

14. The Policies define “employee” to mean “a person: 1. employed by you for wages or salary, or 2. who is a current or former member of your board of directors; or 3. who is a volunteer worker for whom you have the right to direct and control while performing services for you. But ‘employee’ does not include any independent contractor, any employees of any independent contractor while acting within the scope of their employment, or any ‘temporary worker’.”

15. The Policies define “third party” to mean any natural person who is an active or current customer, supplier, vendor, applicant, business invitee or other client of the insured.”

16. Paragraph **2.a.** of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, A. INSURING AGREEMENT”** of the Policies states that “this insurance applies to such ‘damages’ only if ... [t]he ‘damages’ result from ‘claims’ made by ‘employees’, ‘leased workers’, ‘temporary workers’, former ‘employees’, a ‘third party’, or applicants for employment with you”.

17. The Policies define “claim” to mean “written or oral notice presented by:

1. Any ‘employee’, ‘leased worker’, ‘temporary worker’, former ‘employee’ or applicant for employment by you; or
2. The EEOC or any other Federal, state or local administrative or regulatory agency on behalf of such person in item 1. immediately preceding, that the insured is responsible for ‘damages’ as a result of injury arising out of any ‘employment practices’.”

18. The Policies’ definition of “claim” further states that “claim” “includes any civil proceeding in which either “damages” are alleged or fact finding will take place, when

either is the actual or alleged result of any 'employment practice' to which this insurance applies. This includes:

- a. An arbitration proceeding in which such "damages" are claimed and to which the insured submits with our consent;
- b. Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the insured submits with our consent; or
- c. Any administrative proceedings established under applicable federal, state or local laws as may be applicable to "employment practices" covered under this insurance.
- d. Any civil proceeding alleging violation of the Fair Labor Standards Act."

19. Paragraph **2.c.** of "**SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, A. INSURING AGREEMENT**" of the Policies states that "this insurance applies to such 'damages' only if ... [s]uch 'employment practices' occurred after the Retroactive Date, if any, shown in the Declarations and before the end of the policy period; if no date is shown, a retroactive date does not apply, but Exclusion 1. for prior or pending claims or for prior knowledge of a potential claim does apply."

20. Paragraph **2.d.** of "**SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, A. INSURING AGREEMENT**" of the Policies states that "this insurance applies to such 'damages' only if ... [a] 'claim' is both:

- (i) First made against any insured, in accordance with paragraph 3. below, during the policy period or any Extended Reporting Period we provide under Section VI-EXTENDED REPORTING PERIODS; and
- (ii) Reported to us either (i) during the policy period or within sixty (60) days thereafter, or (ii) with respect to any 'claim' first made during

any Extended Reporting Period we provide under Section VI-
EXTENDED REPORTING PERIODS, during such Extended
Reporting Period.”

21. Paragraph 3. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES
LIABILITY, A. INSURING AGREEMENT”** of the Policies states that a “claim” “will be
deemed to have been made at the earlier of the following times:

- a. When notice of such ‘claim’ is received and recorded by you or by
us, whichever comes first; or
- b. When we make settlement in accordance with paragraph B.1.
below.”

22. Paragraph 4. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES
LIABILITY, A. INSURING AGREEMENT”** of the Policies states: “All ‘claims’ for ‘damages’
based on or arising out of:

- a. One ‘employment practice’; or
- b. An interrelated series of ‘employment practices’

by one or more insureds shall be deemed to be one ‘claim’ and to have
been made at the time the first of those ‘claims’ is made against any
insured(s).”

23. Paragraph 1. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES
LIABILITY, B. DEFENSE OF CLAIMS ADMINISTRATIVE HEARINGS & SETTLEMENT
AUTHORITY”** of the Policies states in part that West Bend has “the right and duty to
defend ‘claims’ against the insured seeking ‘damages’ to which this insurance applies
and to pay for related ‘defense expense’. However, we have no duty to (i) defend ‘claims’
against the insured seeking ‘damages’ or (ii) pay for related ‘defense expense’ when this
insurance does not apply.”

24. Paragraph 1. of “**SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, C. EXCLUSIONS**” of the Policies states: “This insurance does not apply to ‘claims’ arising directly or indirectly from any...

- a. ‘Employment practices’ which were the subject of any demand, suit or other proceeding which was initiated against any insured; or
- b. Facts and circumstances, which would cause a reasonable person to believe a ‘claim’ would be made and which were known to any insured,

prior to the effective date of the earlier of (i) the first policy of this type that we issued to you of which this policy was an uninterrupted renewal of this type of coverage, or (ii) this policy.”

25. Paragraph 5. of “**SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, C. EXCLUSIONS**” of the Policies states: “This insurance does not apply to ‘claims’ arising directly or indirectly from any... [o]ral or written publication of material, if such material:

- a. Was published by or at the direction of the insured with knowledge of the material’s falsity; or
- b. Was first published before the Retroactive Date, if any, shown in the Declarations.”

26. Paragraph 6. of “**SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, C. EXCLUSIONS**” of the Policies states: “This insurance does not apply to ‘claims’ arising directly or indirectly from any... [d]ishonest, criminal or fraudulent acts of the insured or the willful failure by the insured or with the insured’s consent to comply with any law or any governmental or administrative order or regulation relating to employment practices. Willful means acting with intentional or reckless disregard for such employment related laws, orders or regulations. The enforcement of this exclusion against any insured under this policy shall not be imputed to any other insured.”

27. Paragraph 7. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, C. EXCLUSIONS”** of the Policies states: “This insurance does not apply to ‘claims’ arising directly or indirectly from any... ‘Bodily injury’.”

28. The Policies define “bodily injury” to mean “physical injury to the body, sickness or disease sustained by a person as the result of direct physical injury to the body, including death resulting from any of these at any time. ‘Bodily injury’ does not include mental anguish or emotional distress that results from an ‘employment practice’.”

29. For the Policies effective from August 30, 2022 to January 1, 2025 only, Paragraph 2.d. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, A. INSURING AGREEMENT”** of the Policies by endorsement states that “this insurance applies to such ‘damages’ only if ... [a] ‘claim’ is both:

- (i) First made against any insured, in accordance with paragraph 3. below, during the policy period or any Extended Reporting Period we provide under Section VI – EXTENDED REPORTING PERIODS; and
- (ii) Reported to us either (i) during the policy period or within thirty (60) days thereafter, or (ii) with respect to any "claim" first made during any Extended Reporting Period we provide under Section VI – EXTENDED REPORTING PERIODS, during such Extended Reporting Period. However, no claim will be denied based upon the insured's failure to provide notice within such specified time, unless this failure operates to prejudice the rights of the insurer, as per Missouri regulation 20CSR100-1.020.”

30. In an endorsement labeled **“TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US,”** the Policies state: “If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same ‘occurrence’ or ‘claim’, the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage

Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.”

THE UNDERLYING CLAIM

31. Jennifer Shahade allegedly was employed by US Chess from 2006 until September 2023. She allegedly served as an officer of US Chess and Director of Women's Programs.

32. Ms. Shahade alleges that in 2011 and 2014 she was sexually harassed and assaulted by Alejandro Ramirez, a male Chess Grandmaster who allegedly served as a “member and contractor/agent of US Chess.”

33. Ms. Shahade alleges that US Chess’ alleged “worship” of Mr. Ramirez allegedly “enabled” these alleged assaults.

34. Ms. Shahade allegedly sent an email to US Chess sometime around June 2022 in which she alleged “besides the rumors about Ramirez possibly having harassed other women, ‘he even assaulted me once.’”

35. Ms. Shahade alleges that US Chess and/or Mr. Bauer retaliated against Ms. Shahade by “improperly release[ing] confidential facts about her assaults,” publicly “attack[ing] her and her reputation,” and “constructively discharg[ing] her.”

36. Ms. Shahade alleges that US Chess and/or Mr. Bauer is liable under the “Racketeer Influenced and Corrupt Organizations (RICO) Act” and “by engaging in a fact pattern of Human Trafficking, Tax Fraud, Fraud, Retaliation, Hostile Work Environment, Constructive Discharge, Defamation, Intentional Infliction of Emotional Distress, Conspiracy to Damage victim Shahade’s Business Reputation, engaging in actions which

place her in a False Light and, Invading her Privacy by releasing protected confidential information and engaging in victim shaming.”

37. Ms. Shahade contends that “as part of her remedies,” she “seeks an order referring US Chess to the IRS for further action to revoke its tax status.”

COUNT I – DECLARATORY JUDGMENT

38. West Bend incorporates the allegations set forth in paragraphs 1 through 37 as if fully set forth herein.

39. West Bend is providing US Chess and Mr. Bauer a defense against Ms. Shahade’s “claim” under a reservation of rights under the Policies.

40. West Bend does not have a duty to defend or indemnify US Chess or Mr. Bauer against Ms. Shahade’s “claim” under the Policies because her “claim” was made during the Policies’ May 31, 2022 to August 30, 2022 policy period but was not reported to West Bend during that policy period, and thus this “claim” does not meet the requirements set forth in Paragraph 2.d. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, A. INSURING AGREEMENT”**.

41. In addition, Ms. Shahade’s “claim” against US Chess and Mr. Bauer may not be covered under the Policies, in whole or in part, because:

- a. Some or all of Ms. Shahade’s allegations may not seek “damages” arising out of “employment practices” and thus the “claim” may not meet the requirements set forth in Paragraph 1. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, A. INSURING AGREEMENT”**;
- b. Ms. Shahade seeks remedies that do not qualify as “damages” as defined by the Policies and thus the “claim” may not meet the requirements set forth in Paragraph 1. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, A. INSURING AGREEMENT”**;
- c. Some or all of the alleged “employment practices” at issue allegedly occurred before the Policies’ Retroactive Date and thus the “claim” may not

meet the requirements set forth in Paragraph 2.c. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, A. INSURING AGREEMENT”**;

- d. US Chess may have been aware by May 31, 2019 of “facts and circumstances that “would cause a reasonable person to believe a ‘claim’ would be made” and thus Paragraph 1. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, C. EXCLUSIONS”** may remove coverage for this “claim”;
- e. Ms. Shahade’s allegations regarding US Chess’ alleged public comments about her may fall within the scope of Paragraph 5. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, C. EXCLUSIONS”** and thus this exclusion may remove coverage for this “claim”; or
- f. Ms. Shahade’s allegations regarding US Chess’ alleged conduct may fall within the scope of Paragraph 6. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, C. EXCLUSIONS”** and thus this exclusion may remove coverage for this “claim”; or
- g. Ms. Shahade may seek recovery for alleged “bodily injury” and thus Paragraph 7. of **“SECTION I – COVERAGE: EMPLOYMENT PRACTICES LIABILITY, C. EXCLUSIONS”** may remove coverage for this “claim.”

42. An actual controversy exists between West Bend, US Chess and Mr. Bauer concerning their respective rights under the Policies and, therefore, there is a justiciable controversy that is ripe for determination by declaratory judgment.

43. Therefore, a declaratory judgment is both necessary and proper to determine the rights, obligations and liability that exist between West Bend, US Chess and Mr. Bauer under the Policies in connection with the “claim” made by Ms. Shahade.

WHEREFORE, Plaintiff West Bend Insurance Company, formerly known as West Bend Mutual Insurance Company, prays that this Court enter judgment in its favor and declare the following:

- a. The Policies do not provide coverage for the “claim” made by Jennifer Shahade against US Chess and Mr. Bauer;

- b. West Bend does not have a duty to defend US Chess or Mr. Bauer against the “claim” made by Jennifer Shahade or any lawsuit that may be filed in connection with same;
- c. West Bend does not have a duty to indemnify or pay for any judgment or settlement entered against or with US Chess or Mr. Bauer in connection with the “claim” made by Jennifer Shahade; and
- d. Any other and further relief this Court may deem just and proper.

Respectfully submitted,

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